THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.7350 OF 2004

ORAL ORDER:

The petitioner claims to be the owner of lorry bearing No.APF-5363. While the said vehicle was proceeding from Tandur to Kodangal, it was intercepted and seized by Prohibition & Excise Inspector, Tandur, along with Station House Officer, Tandur, alleging that the vehicle was carrying 104 wooden crates filled with toddy. Subsequently, show cause notice dated 29.12.2001 was issued calling upon the petitioner to show cause as to why the vehicle should not be confiscated under Sections 45 and 46 of the A.P. Excise Act, 1968 (for short "the Act"). Having received the same, the petitioner through his counsel made a representation dated 11.1.2002, that since the relevant documents including the First Information Report and *panchanama* were not furnished, the petitioner was unable to submit his explanation and requesting to furnish copies of entire case papers. It was also stated that the petitioner never committed any offence and that he had no knowledge about the alleged offence. However, the 2nd respondent without furnishing the documents sought by the petitioner, by order dated 20.6.2003, ordered confiscation of the vehicle in question, holding that the vehicle was used for transportation of toddy without permit. Aggrieved by the same, the petitioner preferred an appeal before the 1st respondent-Commissioner of Prohibition and Excise, specifically contending that the order of confiscation, which was passed without furnishing necessary documents as required in the representation dated 11.1.2002, was in violation of the principles of natural justice. Strangely, the 1st respondent without considering the said objection, dismissed the appeal by order dated 5.3.2004 thereby confirming the order of confiscation passed by the Deputy Commissioner of Prohibition & Excise. Aggrieved by the same, this writ petition is

filed.

I have heard the learned counsel for both the parties and perused the material on record.

A perusal of the said order itself shows that it was passed in the absence of any explanation from the petitioner.

It is to be noted that in the counter-affidavit filed on behalf of the respondents, the plea of the petitioner that a representation dated 11.1.2002 was made requesting to furnish the entire case papers, including FIR and *panchanama*, to enable the petitioner to file suitable explanation has not been denied. However, it is stated that by letter dated 30.11.2002, the petitioner was directed to obtain information from the Station House Officer, Tandur.

The petitioner disputes the said version of the respondents and states that no such letter was received by him.

Thus, it is clear that in spite of a specific request made by the petitioner to furnish the relevant documents, the same were not furnished, and consequently, the petitioner could not submit his explanation. The law is well settled that non-furnishing of documents which formed basis for the impugned order amounts to violation of principles of natural justice. Hence, the order of confiscation which was admittedly, passed without furnishing the documents to the petitioner thereby disabling him to submit the explanation was apparently not in conformity with the fundamental principles of natural justice. That apart, as rightly admitted by the learned counsel for the petitioner the procedure adopted by the 2nd respondent was also not in conformity with the provisions of Section 46(6) of the Act. Hence, the impugned order of confiscation, as confirmed by the appellate authority, is liable to be set aside on that ground alone.

Accordingly, the impugned order is set aside and the writ petition is disposed of with a direction to the 2nd respondent to furnish the documents as sought by the petitioner in the representation dated 11.1.2002, within a period of four weeks from the date of receipt of a copy of this order. On receipt of

such documents, the petitioner is granted liberty to submit his explanation within four weeks thereafter, in which event, the 2nd respondent shall make necessary enquiry and pass appropriate orders in accordance with law.

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(G. ROHINI, J.)

21st August, 2006.
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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.7350 OF 2004

21st August, 2006.

Between:

Nagaram Narsimlu. .. Petitioner.

And

The Commissioner for Prohibition & Excise,
Govt. of A.P., Hyderabad and two others. .. Respondents.

THE HON'BLE Ms. JUSTICE G. ROHINI

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WRIT PETITION No.7350 OF 2004

21-08-2006